IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2422 OF 1990
ARISING OUT OF
PAUPER PETITION NO.4 OF 1998

Vishwambar Dayal P. Gupta. ..Plaintiff.

V/s.

Union Bank of India & Anr. ..Defendants.

Mr.S.K.Chaurasia i/b. A.M.Sarogi for plaintiff.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 16, 2007.

P.C. :

1. None appears for the defendants though duly served. No written statement has been filed on behalf of the defendant. It is for that reason this suit has been placed under caption "undefended suit" in terms of the Order dated 3rd September, 2003. Accordingly, I proceed to decide the suit in exercise of powers under Order 8 Rule 10 of Civil Procedure Code.

2. In substance, the case of the plaintiff is that the plaintiff had taken loan from the defendant No.1 by hypothecating his plant and machinery and stock in trade. One of the condition of hypothecation was that the plaintiff was required to

insure the machinery and stock in trade in the value of Rs.70,000/-. The arrangement agreed between the plaintiff and defendant No.1 was that the premium amount will be offered by the plaintiff to the defendant No.1, who in turn was required to pay the same within specified time to the defendant No.2-Insurance Company, so as to insure the machinery and stock-in-trade in time. For the first initial period between 12/8/1982 upto August, 1984, insurance cover note with regard to the machinery and stock-in-trade was renewed by making payment of insurance premium by plaintiff to defendant No.1, who in turn paid the same to the defendant No.2 in time. Consequent to such payment, the defendant No.2 issued fresh cover note in the sum of Rs.70,000/-. As per the said agreed arrangement for the next period for 1984-85, the plaintiff made payment of Rs.400/- towards premium amount to the defendant No.1 on 7th May, 1984 as was done in the previous year. After making that payment, the plaintiff was of the view that the defendant No.1 has made payment towards premium amount to defendant No.2 and fresh insurance cover note has been duly issued in respect of the machinery and stock in trade. The plaintiff was under bonafide impression that renewed insurance policy has been received by the defendant No.1, who

was keeping control on such insurance cover note as in the past. The plaintiff had no reason to doubt that the defendant No.1 has failed to pay the premium amount to the insurance company to get the insurance cover note renewed for the period of 1984-85 onwards. Unfortunately, fire took place in the premises of the plaintiff on 24th November, 1984, in which entire machinery and stock in trade of the plaintiff has been lost. The plaintiff has given break-up of the amount of loss caused to the plaintiff on account of such fire in paragraph-6 of the plaint, which exceeds little over Rs.70,000/-. In this backdrop, the plaintiff has approached this Court for relief of recovery of the amount of Rs.1,07,800/- together with interest at the rate of 18% per annum from 24th November, 1984 till payment.

3. The present suit has been filed on 28th October, 1987, which is obviously within time. The claim of the plaintiff is that because of the fault of the defendant No.1, the defendant No.2 Insurance Company has declined to compensate the plaintiff for the loss suffered by the plaintiff in respect of machinery and stock-in-trade, which loss exceeds little over Rs.70,000/-, for which the plaintiff had paid premium for the insurance cover note up to

Rs.70,000/-.

4. As mentioned earlier, none of the defendants have bothered to appear today before the Court nor have filed any written statement to counter the case made out by the plaintiff. Thus understood, in view of the case made out by the plaintiff in the plaint, which is restated in the affidavit of examination in chief of the plaintiff dated 29th June, 2007, the plaintiff should succeed in his claim. For, the defendants seems to have no plausible explanation to offer.

5. The question however, that needs to be addressed is whether the defendant No.2 Insurance company can be made responsible for the loss caused to the plaintiff on account of inaction of the defendant No.1. In my opinion, defendant No.2 cannot be made responsible because there was no legal obligation on defendant No.2 to continue insurance cover after default committed in payment of the premium amount. Thus understood, the liability will have to be fastened only on the defendant No.1. It is because of the inaction of the defendant No.1, the loss caused to the plaintiff cannot be made good, though the plaintiff had done everything that was

necessary to be done by offering premium amount as early as on 7th May, 1984 to the defendant No.1. Accordingly, the plaintiff ought to succeed and compensated for the loss caused to him on account of fire, which took place on 24th November, 1984, in which machinery and stock in trade of the plaintiff has been damaged.

6. The next question is to what extent the defendant No.1 can be made responsible or liable to compensate the plaintiff. As mentioned earlier in the paragraph-6 of the plaint, the plaintiff has given break-up of loss of machinery and stock in trade, which amount if considered together is just over Rs.70,000/-. It is the case of the plaintiff that the insurance cover amount was limited to the extent of Rs.70,000/- only. Even if the plaintiff was to succeed against the defendant No.1, that can be only to the extent of Rs.70,000/-, which amount is ascribable to the insurance cover note of Rs.70,000/-. Accordingly, the plaintiff can succeed against the defendant No.1 only to the extent of Rs.70,000/-. That amount became due and payable to the plaintiff soonafter the damage caused on account of fire, which took place on 24th November, 1984.

7. The next question is : What is the interest component payable to the plaintiff. The plaintiff claims interest at the rate of 18% per annum from 24th November, 1984. In my opinion, the plaintiff has not produced any material to substantiate the claim of interest amount at the rate of 18% per annum from 24th November, 1984. That claim is definitely much higher than the market rate, which might have been prevailing at the relevant time. In any case, in my considered opinion, the plaintiff should be provided with interest at the rate of 10% per annum from 24th November, 1984 till institution of the suit on 28th October, 1987 on the sum of Rs.70,000/-, which is the principal amount.

8. In so far as further interest payable to the plaintiff for the period after institution of the suit, I am inclined to grant interest to the plaintiff at the rate of 6% per annum on the suit claimed amount.

9. Accordingly, the suit is decreed in favour of the plaintiff on the following terms.

(i) The defendant No.1 is ordered to pay to the plaintiffs principal amount of

Rs.70,000/- together with interest at the rate of 10% per annum from 24th November, 1984 till 27th October, 1987 and further interest at the rate of 6% per annum from 28th October, 1987 till the date of the realisation.

(ii) The suit is decreed on the above terms with costs.

(iii) Decree be drawn up on the above terms.

(A.M.KHANWILKAR,J)